IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 88 of 1992

Date of Decision :- March 17, 2007

Radhey Sham ....PETITIONER

VERSUS

State of Haryana and another ....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL

Present:- Mr. Sunil Panwar, Advocate (Amicus Curiae)
for the petitioner.

Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

MEHTAB S.GILL, J.

This is a revision against the judgment dated 25.1.1992 of the Additional Sessions Judge, Sonepat dismissing the appeal of petitioner against the judgment/order dated 26.7.1990/27.7.1990 of the Chief Judicial Magistrate, Sonepat convicting Radhey Sham son of Kanahya Lal under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) and sentencing him to undergo R.I. for nine months and to pay a fine of Rs.1,000/-, in default to undergo further R.I. for two months.

Criminal Revision No. 88 of 1992

The case of the prosecution is that on 29.6.1983 at about 6.30 p.m., Sh. S.K.Sharma Govt. Food Inspector and Dr. Baldev Dutta went to the premises of the petitioner/accused and found him in possession of 10 Kgs. of Ice Cream kept in a refrigerator for public sale. Notice on form No.VI of the Act was issued and a sample was taken. 900 grams of Ice Cream was purchased by the Govt. Food Inspector. A homogeneous quantity was made and thereafter, three bottles were filled in equal parts after cleaning them. Thereafter, they were sealed and labelled. One sealed bottle along with Form No.VII and the specimen seal was sent to the Public Analyst Haryana. Two samples along with copies of form No.VII were deposited with the Local Health Authority, Sonepat. The contents were analysed by the Public Analyst Haryana and found to be Milk fat 7.0% against minimum prescribed standard of 8.0%. There was starch of 2.9% without any label declaration. Rule 43(2) of the Prevention of Food Adulteration Rules has not been followed. Petitioner was held liable to be punished under Sections 7 and 16 of the Act.

The prosecution to prove its case brought into the witness box Sh. S.K.Sharma Govt. Food Inspector as PW1 and Dr. Baldev Dutta as PW2.

Learned counsel for the petitioner has argued, that 900 grams of Ice Cream taken for analysis was not made homogeneous. S.K.Sharma Govt. Food Inspector PW1 did not put gum, while pasting the ends of the paper wrapper and paper slip. S.K.Sharma PW1 sent samples to Public Analyst Haryana through the Railway authorities by a registered parcel, but no copy of the bility was produced before the trial Court. Sample was

taken on 29.6.1983 and there is a delay in despatching the sample to the Public Analyst Haryana, which was done on 4.7.1983.

Learned counsel for the State has rebutted all these arguments put forward by learned counsel for the petitioner.

I have heard the learned counsel for the parties, perused the record and the impugned judgment with their assistance.

After going through the statement of S.K.Sharma Govt. Food Inspector PW1 and Dr. Baldev Dutta PW2, it is clear that the ice cream sample was purchased and made into a homogeneous quantity. After cleaning the bottles, it was put into the bottles. Bottles were corked and sealed with the seal of Deputy C.M.O. Health. Sh. S.K.Sharma PW1 has categorically stated, that paper wrapper was folded and gum was applied on both ends of the paper. The representative sample was sent to the Public Analyst Haryana through Railway authorities by a registered parcel. Single copy of the bility was given, which was sent to the Public Analyst, for getting the delivery of the sample. The Public Analyst has clearly mentioned in his report that the specimen of the seal and the sample was received by him in a registered parcel.

I do not find any infirmity in the judgment of the learned Addl. Sessions Judge. Conviction of the petitioner is maintained.

This Court in **Mahavir Vs. State through Govt. Food Inspector, 2000(4) RCR (Crl.) 208** has held that ends of justice would be met if the sentence of the petitioner is reduced to that already undergone. Similarly, Hon'ble Delhi High Court in **Babu Ram Vs. State, 2001(4) RCR (Crl.) 785** has held that this case is also under the Prevention of

Criminal Revision No. 88 of 1992

Food Adulteration Act, 1954, where ends of justice would met if the sentence is reduced to that already undergone.

Appeal is of the year 1992 and the sample was taken into possession on 29.6.1983. 24 years have elapsed. Sword of conviction is hanging on the head of the petitioner for a long time. This itself is a punishment. Sentence of the petitioner is modified to that already undergone.

With the above modification in order of sentence, revision petition is dismissed.

March 17, 2007 **(MEHTAB S.GILL)**
ska **JUDGE**

WHETHER TO BE REFERRED TO REPORTER? YES/NO